(22)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 820

JAMES J. LAUGHLIN,

Petitioner,

vs.

LESLIE C. GARNETT, JOHN W. FIHELLY AND ALLEN BAKER.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA WITH BRIEF IN SUPPORT THEREOF.

JAMES J. LAUGHLIN,
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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA WITH BRIEF IN SUPPORT THEREOF.

The petitioner prays that writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia entered November 8th, 1943, affirming the action of District Court in refusing petitioner's right to amend his complaint.

Opinion Below.

The opinion of the United States Court of Appeals for the District of Columbia has not yet been reported.

Jurisdiction.

The judgment of the court of appeals was entered on November 8, 1943 (R. 49-50). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. By order of the Chief Justice of the United States the time for filing said petition for writ of certiorari has been extended to March 28th, 1944.

Questions Presented.

Whether the Acts set forth in the complaint filed in District Court come within the rule of immunity announced in *Spalding* v. *Vilas,* 161 U. S. 483.

Statement.

On September 9, 1936, petitioner, a member of the bar of this Court, was indicted for the crime of forgery and uttering larceny, larceny after trust and embezzlement. He was convicted in District Court of forgery and uttering and of embezzlement. He appealed to this Court and the conviction was reversed. *Laughlin* v. *United States,* 67 Appeals D. C. 355, 92 F. 2d 506. After the conviction he was permitted to remain on bond. Upon imposition of sentence—March 19, 1937—he was denied bond pending appeal. The judgment of this Court was rendered on July 22, 1937. He was ordered released on bond by this Court and he was released on July 22, 1937. It is well to point out that while the original indictments were pending and while the appeal from conviction was pending no disciplinary action of any kind was taken against him by the Grievance Committee of the Bar Association.

On November 17, 1937, four additional indictments were returned against petitioner in District Court. The indictments were based on the same subject matter as that

contained in the original indictments. On November 29, 1937, an order was signed by the Chief Justice of District Court suspending petitioner from practice in District Court. Such order was signed without notice and hearing. Petitioner resisted this order and a petition for a writ of mandamus was filed in this Court. This Court on December 27, 1937, ruled that the order of District Court "was improvidently made and should be set aside and annulled." See *Laughlin* v. *Wheat*, 68 Appeals D. C. 190, 195 F. 2d 101. On March 26, 1938, petitioner was acquitted in District Court on all counts of all indictments. All charges brought by the Bar Association were then dismissed.

A complaint was filed in District Court on March 25, 1939, for damages against Leslie C. Garnett who was United States Attorney when petitioner was prosecuted. The complaint also named John W. Fihelly, Assistant United States Attorney, Allen Baker, a police officer who was attached to the office of the United States Attorney, and Charles E. Ford, an attorney. The complaint was for malicious prosecution and alleged conspiracy on the part of the four named.

All defendants answered and in due time the case came on for pretrial hearing. At the pretrial hearing Judge Luhring suggested that petitioner file a more condensed complaint and that he would not be prejudiced in so doing. That was done and it was again suggested that still more condensed complaint be filed. There had been no motion to dismiss filed as to the first complaint nor was there any order signed dismissing the original complaint, the amended complaint nor the second amended complaint. When the second amended complaint was filed it came before Judge Bailey who held that as to Garnett, Fihelly and Baker the complaint did not show sufficient to take it out of the general rule that public officials are immune from suit within the scope of their authority. At that time it was suggested that the matter go before Judge Bailey. A motion was

filed for leave to file a third amended complaint with copy of amended complaint. That motion was taken under advisement and later denied. The appeal is from the denial of that motion. Defendant Ford is not concerned in this appeal since the case is at issue in District Court as to that defendant.

Specification of Errors to Be Urged.

The Court of Appeals erred:

1. In holding that the facts of the instant case fall within the rule of *Spalding* v. *Vilas*, 161 U. S. 483.

2. In affirming the action of District Court.

Reason for Granting the Writ.

1. We believe that the Court in holding that the acts set forth in the complaint are protected by the ordinary immunity granted government officials has stated a rule so broadly that it is now oppressive and that a citizen is at the absolute mercy of officials of the Government.

2. That since so much time has elapsed since *Spalding* v. *Vilas* became the law of the land that this Court should now clarify the situation. For the reasons stated it is respectfully submitted that this petition for writ of certiorari should be granted.

JAMES J. LAUGHLIN,
National Press Building,
Petitioner in Proper Person.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 820

JAMES J. LAUGHLIN,

Petitioner,

vs.

LESLIE C. GARNETT, JOHN W. FIHELLY AND ALLEN BAKER.

BRIEF IN SUPPORT OF PETITION.

Opinion Below.

The opinion of the United States Court of Appeals for the District of Columbia has not yet been reported.

Jurisdiction.

The judgment of the Court of Appeals was entered on November 8, 1943 (R. 49-50). The jurisdiction of this Court is invoked under Section 240(2) of the Judicial Code, as amended by the Act of February 13, 1925. By order of the Chief Justice of the United States the time for filing said petition for writ of certiorari has been extended to March 28, 1944.

Question Presented.

Whether the Acts set forth in the complaint filed in District Court come within the rule of immunity announced in *Spalding* v. *Vilas*, 161 U. S. 483.

Statement of the Case.

The statement of the case already appears in the petition and is not again repeated.

Specification of Errors to Be Urged.

The Court of Appeals erred:

1. In holding that the facts of the instant case fall within the rule of *Spalding* v. *Vilas*, 161 U. S. 483.

2. In affirming the action of District Court.

Argument.

The United States Court of Appeals for the District of Columbia has had occasion in the past five years to rule on the matter of governmental immunity. See *Cooper* v. *O'Connor*, 69 App. D. C. 100; 99 F. 2d 135; *Glass* v. *Ickes*, 73 App. D. C. 3; 117 F. 2d 273; *Colpoys* v. *Gates*, 73 App. D. C. 193; 118 F. 2d 16; and *Jones* v. *Kennedy*, 73 App. D. C. 292; 121 F. 2d 40. These cases all follow *Spalding* v. *Vilas*, 161 U. S. 483, 16 S. Ct. 631, 40 L. Ed. 780. If the acts of the respondents were proper and within the limits of their authority then they are immune. If their acts were improper and they are without the limits of their authority then they should be compelled to stand trial.

The matter of governmental immunity is an important question and the tendency of the courts in extending the doctrine has resulted in oppression. We think this is well illustrated in the concurring opinion of Chief Justice Groner

in the United States Court of Appeals for the District of Columbia in the case of *Glass* v. *Ickes, supra.* We find this:

> "The importance of the principle involved induces me to express my views separately. The opinion, I think, correctly states the law of privilege applicable to an official of government and likewise its basis in a public policy that such officers should be at liberty to exercise their functions with independence and without fear of the consequences. The necessity of the rule is obvious, but its cloak of absolute immunity offers such far reaching opportunity for oppression that it manifestly ought not to be extended beyond the impulse that gave it being. * * * And in this view I am impelled to concur in the opinion, though in doing so I express with great deference the fear that in this and previous cases we may have extended the rule beyond the reasons out of which it grew and thus unwittingly created a privilege so extensive as to be almost unlimited and altogether subversive of the fundamental principle that no man in this country is so high that he is above the law."

It is difficult to understand when the third amended complaint is read how it can be contended that the acts alleged come within the scope of governmental immunity. At pages 26 and 27 of the Record, we find the following in paragraphs 12, 13 and 14:

> "12—Plaintiff alleges that the defendant Garnett sent the defendant Baker to the District of Columbia Reformatory at Lorton, Virginia to interview clients of plaintiff confined at Lorton and the defendant Baker acting wholly outside the scope of his official duties and acting maliciously and wrongly asked certain of plaintiff's clients to make false charges against plaintiff and the said defendant Baker stated to plaintiff's clients that if the said clients would make false charges against plaintiff that the defendant Baker and the defendant Garnett would see that the sentences of the said

clients would be modified; plaintiff alleges that the defendant Baker at the time of his aforesaid visit stated to the clients of plaintiff that he (Baker) was acting at the request and under the direction of the defendant Garnett. The action of the defendant Garnett was wholly outside the scope of his official duties and was malicious and wrongful."

"13—Plaintiff alleges that the defendant Baker acting under the direction of the defendant Garnett approached certain attorneys in the District of Columbia and endeavored to induce the said attorneys to make false charges against plaintiff—said false charges were false and known by the defendants Baker and Garnett to be false. The said defendant Baker informed the attorneys in question that he was acting at the request and under the direction of the defendant Garnett; the action of the defendants Baker and Garnett were wholly outside the scope of their official duties and were malicious and wrongful."

"14—Plaintiff alleges that the defendants Baker and Garnett did induce certain lawyers to make unjustified and unwarranted charges—which were known by the defendants Baker and Garnett to be false—against plaintiff and the defendant Garnett did thereupon transmit such charges over his own signature to the personal attention of his friend—Walter C. Clephane—of the Bar Association. The said Clephane although he well knew that the charges were false and were unjustified and unwarranted asked the plaintiff to visit him at his office; plaintiff visited the said Clephane and was subjected to much abuse and ridicule at the hands of the said Clephane; the said Clephane informed plaintiff that he was acting at the request of the defendant Garnett; plaintiff alleges that the said Clephane endeavored to pursue the charges against plaintiff although he well knew that the charges were false and were unjustified and unwarranted but the full committee of the Bar Association realizing that the charges were without substance dismissed the said charges.

Plaintiff alleges that the actions of the — Garnett in this regard were wholly outside the scope of his official duties and were malicious and wrongful."

We find at page 29 of the Record, paragraph 18 which reads as follows:

"18—Plaintiff alleges that the defendants Garnett, Fihelly, Baker and Ford did induce the aforesaid Johnsen, Dietrich and Miller to make false charges against plaintiff—which charges were known by the defendants Garnett, Fihelly, Baker and Ford to be false; plaintiff further alleges that the defendants Fihelly, Baker and Ford acting under the direction of the defendant Garnett induced the said Johnsen, Dietrich and Miller to prepare certain forged documents which were known to the defendants Garnett, Fihelly, Baker and Ford to be false and as a result of the false testimony given by the aforesaid Johnsen, Miller and Dietrich—which was known by the defendants Garnett, Fihelly, Baker and Ford to be false—and the false and forged documents—which were known by the defendants Garnett, Fihelly, Baker and Ford to be false and forged—plaintiff was indicted by the grand jury."

At page 30 of the Record we find paragraph 23 reading as follows:

"23—Plaintiff alleges that while he was confined at the Washington Asylum and Jail he was approached by the aforesaid Walter Johnsen who revealed to plaintiff the details of the conspiracy entered into by defendants Garnett, Fihelly, Baker and Ford and the aforesaid Johnsen informed plaintiff that he was angry with the defendants Garnett, Fihelly, Baker and Ford because they had failed to keep their bargain with Johnsen, Dietrich and Miller—that is the promise that the aforesaid Johnsen, Dietrich and Miller would be released if they were successful in convicting plaintiff by the use of false testimony and false documents; plaintiff alleges that thereupon the said Johnsen turned over to

> plaintiff a written statement signed by the said Johnsen and a written statement signed by the aforesaid Erma Miller outlining the details of this conspiracy and the aforesaid statements are annexed hereto as Exhibits A and B and made a part of this complaint."

It is difficult as already stated to understand how it can be said that these acts of the respondents are protected by the rule of governmental immunity. Of course if it can be said that government officials can do the things alleged to have been done by these respondents and yet not have to respond in damages then certainly there is little protection for a citizen. It is our contention that this Court never intended that the rule of immunity should be carried to such an extent. On this account we say that the ruling of the Court of Appeals was erroneous and should be reversed.

Conclusion.

For the foregoing reasons it is respectfully submitted that the judgment of the United States Court of Appeals for the District of Columbia should be reversed and the cause remanded to District Court to the end that respondents will be required to accept and stand trial.

JAMES J. LAUGHLIN,
National Press Building,
Plaintiff in Proper Person.

No. 820

In the Supreme Court of the United States

OCTOBER TERM, 1943

ELMER J. LATHAM, PETITIONER,

v.

LESLIE C. GARNETT, JOHN W. PEHLE AND ALLEN BAKER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 820

JAMES J. LAUGHLIN, PETITIONER

v.

LESLIE C. GARNETT, JOHN W. FIHELLY, AND ALLEN BAKER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINION BELOW

The per curiam opinion of the court of appeals (R. 49–50) is reported at 138 F. (2d) 931. The order of the district court denying petitioner's motion for leave to file a proposed third amended complaint appears at pages 41–42 of the record.

JURISDICTION

The judgment of the court of appeals (R. 51) was entered on November 8, 1943. A petition for rehearing was denied on November 13, 1943 (R.

54). On February 11, 1944, the Chief Justice of the United States extended petitioner's time for filing a petition for a writ of certiorari to March 13, 1944 (R. 53), and on March 11, 1944, he granted petitioner an additional extension of time until March 28, 1944 (R. 53). The petition for a writ of certiorari was filed on March 28, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the district court abused its discretion in denying petitioner leave to file his proposed third amended complaint.

STATEMENT

Petitioner instituted an action for conspiracy and for malicious prosecution against respondents, a former United States attorney, an assistant United States attorney, and a police officer attached to the United States attorney's office (R. 3–14). The answer to the complaint filed by respondents alleged as a "further defense" that the complaint failed to state a claim upon which relief could be granted against respondents, in that the complaint showed on its face that respondents' acts were performed in the course of their official duties (R. 44–45). Without formal action by the district court, petitioner filed an amended complaint (R. 14–20), and, after respondents had

moved under Rule 12 (f) of the Federal Rules of Civil Procedure to strike the amended complaint (R. 45–46), again voluntarily amended his complaint without formal action by the court (R. 20–23). Motions by respondents to dismiss the second amended complaint on the ground that it failed to state a claim (R. 45–46) were sustained, and petitioner was given leave to move for permission to file a third amended complaint, provided that a copy of the proposed complaint accompanied the motion (R. 23). The motion was made (R. 23–41) and denied (R. 41–42). On appeal, the Court of Appeals for the District of Columbia affirmed the order denying leave to file the proposed third amended complaint (R. 51).

The second amended complaint alleged in substance that respondents, acting maliciously, without probable cause, and palpably beyond the scope of their official duties, prevailed upon certain persons to make false charges against petitioner and prepare false documents; that on the basis of such false testimony respondents brought about petitioner's indictment and trial on several criminal charges of which he was ultimately acquitted (R. 20–23). The proposed third amended complaint set forth the alleged reasons which inspired respondents' malice towards petitioner. It further alleged that respondents induced certain persons to make false charges against petitioner and transmitted such charges to the Bar Association in an

endeavor to harass him in the practice of law; that respondents endeavored to induce petitioner's clients to dispense with his services; that on the promise of lower prison sentences they induced certain of petitioner's clients to make false charges against him and by means of false charges and forged documents succeeded in having him indicted and tried on criminal charges of which he was ultimately acquitted. The proposed complaint also set forth the means by which petitioner allegedly discovered the alleged conspiracy and annexed as part of the complaint affidavits by the persons who allegedly had been induced to make the false charges. (R. 24–33.)

ARGUMENT

The narrow question presented by this petition is whether the district court abused its discretion in denying petitioner leave to file his proposed third amended complaint.[1] We think that it is clear that no abuse of discretion was shown.

The gist of the complaint is that respondents maliciously instituted criminal charges against petitioner by the use of false testimony. Petitioner contends (Pet. 9) that the allegations that

[1] Under Rule 15(a) of the Federal Rules of Civil Procedure "when justice so requires" the court may allow the filing of amended pleadings. The granting of such leave is a matter of discretion and is therefore not subject to review except for abuse. *Aetna Casualty & Surety Co.* v. *Abbott*, 130 F. (2d) 40, 44 (C. C. A. 4); cf. *United States* v. *Atherton*, 102 U. S. 372, 375.

respondents induced certain persons to make the false charges and prepare the false documents which formed the basis of the prosecution (paragraphs 18 and 19, R. 29–30) take this complaint out of the general rule that prosecuting officials are immune from civil liability for acts performed in their official capacity even though actuated by malice.[2] However, the immunity of a government official from civil liability extends to "action having more or less connection with the general matters committed by law to his control or supervision." *Spalding* v. *Vilas,* 161 U. S. 483, 498; *Cooper* v. *O'Connor,* 99 F. (2d) 135, 139 (App. D. C.), certiorari denied, 305 U. S. 642. The obtaining of evidence to be presented to a grand jury is as much a function of a prosecuting attorney as the presentation of such evidence. Hence, under the cases cited, respondents cannot be subjected to civil liability for such acts.

Petitioner also contends (Pet. 8) that paragraphs 13 and 14 of the proposed complaint, in alleging that respondents Baker and Garnett induced certain persons to make false charges

[2] *Cooper* v. *O'Connor*, 99 F. (2d) 135 (App. D. C.), certiorari denied, 305 U. S. 642; *Yaselli* v. *Goff*, 12 F. (2d) 396 (C. C. A. 2), affirmed, 275 U. S. 503; *Anderson* v. *Rohrer*, 3 F. Supp. 367 (S. D. Fla.); cf. *Spalding* v. *Vilas*, 161 U. S. 483; *Jones* v. *Kennedy*, 121 F. (2d) 40 (App. D. C.), certiorari denied, 314 U. S. 665; *Glass* v. *Ickes*, 117 F. (2d) 273 (App. D. C.), certiorari denied, 311 U. S. 718; *Adams* v. *H. O. L. C.*, 107 F. (2d) 139 (C. C. A. 8); *Phelps* v. *Dawson*, 97 F. (2d) 339 (C. C. A. 8).

against petitioner and transmitted such charges to the Bar Association (R. 27–28), charged acts which are not within the scope of the immunity granted to prosecuting officials. It may be, as the court below suggested (R. 50), that allegations of the malicious institution of false charges in an endeavor to cause an attorney's disbarment [3] would present a basis for a civil action against prosecuting officials.[4] In the instant case, however, there is no suggestion that the acts alleged in paragraphs 13 and 14 resulted in the temporary disbarment of petitioner alleged in paragraph 27 (R. 32), or even in formal charges against petitioner. In themselves these paragraphs present a situation analogous to that where efforts to cause institution of criminal proceedings have proved unsuccessful and have therefore been held not to be actionable. *Melvin* v. *Pence,* 130 F. (2d) 423 (App. D. C.); *Larocque* v. *Dorsey,* 299 Fed. 556, 559 (C. C. A. 2); *Cooper* v. *Armour,* 42 Fed. 215 (C. C. N. D. N. Y.). And in any event, as the

[3] Malicious attempts to effect revocation of a license have been held to support actions for malicious prosecutions. *Melvin* v. *Pence*, 130 F. (2d) 423 (App. D. C.); *National Surety Co.* v. *Page*, 58 F. (2d) 145 (C. C. A. 4), rehearing denied, 59 F. (2d) 370.

[4] The court below indicated (R. 50) that in its judgment the presentation of charges to a Bar Association, while privileged, is beyond the scope of a prosecutor's normal duties and therefore not protected by the immunity doctrine expressed in *Cooper* v. *O'Connor*, *supra*. *Cf. Colpoys* v. *Gates*, 118 F. (2d) 16 (App. D. C.).

court below held, the allegations of these paragraphs, together with those of paragraph 27, are clearly too vague and indefinite to stand alone as a cause of action when the main allegations of the complaint relating to official misconduct on the part of the respondents are stricken.

Moreover, the question before the district court in the instant case was whether to allow the proposed third amended complaint as a whole to be filed. Paragraphs 13, 14, and 27 constitute a minor undeveloped portion of a long complaint based primarily on the charge of malicious prosecution of criminal offenses. By its dismissal of the second amended complaint, the district court had already ruled that the criminal proceedings presented no ground for relief, and petitioner had taken no appeal from that order. Yet the bulk of his third amended complaint consisted of a repetition, with only unimportant amplifications of evidentiary details, of the very same allegations which he had made in the second amended complaint. Clearly, therefore, the inference is warranted that petitioner's asserted cause of action rested primarily upon the allegations of false criminal charges just as had been the case with all the prior complaints he had filed, and the court was under no duty to allow him to file a complaint the main portion of which consisted of a repleading of facts which had already been properly held insufficient to constitute a cause of action.

CONCLUSION

The action of the district court in denying leave to file a third amended complaint involved no abuse of discretion, but on the other hand was plainly in accordance with applicable decisions of this Court, and the judgment of the court below affirming that action presents no question warranting further review. Accordingly, we respectfully submit that the petition for a writ of certiorari should be denied.

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